

Editor's note: Appealed -- aff'd, Civ. No. 1929-73 (D.D.C. Feb. 15, 1974)

DUNCAN MILLER

IBLA 72-462

Decided July 17, 1973

Appeal from denial of extension of oil and gas lease (Sacramento 063266), by California State Office, Bureau of Land Management.

Affirmed.

Oil and Gas Leases: Generally -- Oil and Gas Leases: Assignments or Transfers

Under 30 U.S.C. § 187a (1970), a proposed assignment of an oil and gas lease, or portion thereof, filed in conformity with the regulations, may be disapproved only for lack of qualification of the assignee or for lack of sufficient bond. A proposed assignment, so properly filed, takes effect as of the first day of the lease month following the filing of all required and proper assignment documents.

Federal Employees and Officers: Generally -- Oil and Gas Leases: Generally --Oil and Gas Leases: Assignments or Transfers

Any action taken, or any omission to act promptly, on the part of federal employees, cannot vitiate the statutory mandates of the Mineral Leasing Act, as amended, 30 U.S.C. §§ 181 et seq. (1970), with respect to oil and gas leases, inter alia.

Oil and Gas Leases: Extensions

An oil and gas lease may be extended only in accord with the provisions of the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. §§ 181 et seq. (1970).

APPEARANCES: Duncan Miller, pro se.

OPINION BY MR. FISHMAN

Duncan Miller has appealed from a decision of the California State Office, Bureau of Land Management, dated April 27, 1972, denying his request for an extension of his oil and gas lease,

Sacramento 063266. 1/ Appellant's asserted entitlement to an extension was based on the fact that a partial assignment out of that lease, filed on July 21, 1970, was not approved until April 19, 1972, although it was made effective as of August 1, 1970, i.e., the first day of the month following the date the assignment request was filed. The effective date thus established accords with 43 CFR 3106.3-3.

The reason for the delay is manifested by a memorandum in the file from Cera E. Shaw, Land Law Examiner, Minerals Adjudication Section, dated August 30, 1971. It states in applicable portion that:

* * * [B]ecause the lease embraced land situated within the 1-mi buffer zone of the NAVAL PETROLEUM RESERVE, all action was suspended by the Director's memo dated Jan. 26, 1970 until we have had further notice from the Director's office because the Navy Department had requested that any lease for such land not be renewed or extended or re-leased because it is possible that operations on the lands could adversely affect the reserve, and, that if we were to approve this partial

1/ Appellant's request for an extension, styled "Notice of Appeal with Reasons", states as follows:

"The reasons for this appeal are as follows:

"The lessee filed an assignment in July, [sic] 1970, which should have, according to procedures, been approved and accordingly extended the subject lease, however, this was not done and the Sacramento Land Office in a note of last month, made reference to a mysterious telephone conversation with the assignee as an excuse for not having approved the assignment. Meanwhile, the lessee has been held up in his efforts to persevere with exploration evaluation potentials.

"A letter dated January 1, 1972, from a Consulting Geologist in connection with subject lease states in part:

'Mr. * * *, Petroleum Engineer whom you have contacted, and a good friend of mine, suggested that I write to you concerning further work under captioned oil and gas lease * * * If you wish to spend additional monies on evaluation, I will be pleased to run a magnetometer survey. This survey may give encouragement to drill a shallow hole.'

"The lessee has been deprived of his lease and of his constitutional rights. Exploration efforts to be finalized require advance preparation, but however, the Land Office has precluded these efforts by failing to promptly confirm the extension.

"Consequently, the Lessee feels his lease should be extended and since normally such extensions are automatic and immediate, he should have the differential in time to compensate the deficiency in time as above referred to."

asgn [sic] it would cause segregated leases and each would be extended under the regulations (43 CFR 3128.5 on the instrument) from 8/1/70 thru 7/31/72. I also told her [Ruth Ross, the proposed assignee] we would notify her when the request is finally adjudicated, and if not approved, the advance rentals would be refunded.

Clarification of the Bureau of Land Management Director's memorandum, dated January 26, 1970, was obtained on April 14, 1972, as reflected by Cera E. Shaw's note to the case file of that date:

Mr. Young, Chief, Division of Technical Services, advised Norma Kuhn and Cera Shaw this date that he had contacted the Director's office about memorandum of January 26, 1970, pertinent to leasing lands within 1 mile of the Naval Petroleum Reserve No. 1 and that Eldon Hayes of the Director's office telephoned Mr. Young this morning saying the word "releasing" in the memorandum is interpreted by the Solicitor as meaning "issuance of another lease" and that we have permission to take appropriate action on cases involving lands within one mile of Naval Petroleum Reserve No. 1, except no new leases are to be issued for such lands until further notice from the Director's office.

Miller's appeal to this office reads as follows:

The reason for this appeal is that the lessee appellant has had his contractual [sic] rights violated in the Sacramento Land Office and the officers thereof have made decisive declarations in which they have shown they are going to ignore the said contractual [sic] rights.

Consequently, their decision must be overruled.

WHEREFORE, the appellant lessee prays accordingly.

The filing of a proposed assignment, in conformity with applicable law and regulations requires approval by the Department except in limited circumstances, Charles D. Edmonson, 61 I.D. 355, 366 (1954). The Department "shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond * * *" It may in its discretion, "disapprove an assignment of a separate zone or deposit under any lease, or of a part of a legal subdivision". 30 U.S.C. § 187a (1970). None of these precluding considerations is present in the instant case. However, an assignment is ineffective unless and until it is approved. Lester C. Hotchkiss, A-27342 (August 14, 1956).

Under 30 U.S.C. § 187a (1970), "any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office" and regardless of when approval is given, that effective date prevails. Franco Western Oil Co., 65 I.D. 316 (1958).

Thus, the rights of appellant and his assignee became fixed as of August 1, 1970, the first day of the month following the filing of the assignment documents. Any act taken, or any omission to act promptly, on the part of Bureau of Land Management personnel, cannot vitiate the statutory mandates of the Mineral Leasing Act, as amended, 30 U.S.C. §§ 181 et seq.

Although appellant has asserted that he "has been held up in his efforts to persevere with exploration evaluation potentials * * *", he has not demonstrated that either the Bureau of Land Management or the Geological Survey 2/ in any way interdicted his proceeding with exploration plans.

In a somewhat similar matter, oil and gas leases were issued covering lands affected by oil shale claims, which ultimately went to patent. Thereafter, the oil and gas lessees requested refund of the rentals they had paid, on the theory that they had been effectively denied any rights in the oil and gas leases, since the issuance of patents related back to the time of the making of the mining locations, i.e., prior to February 25, 1920.

The Comptroller General, in Dec. Comp. Gen. B-123118 (July 1, 1955) stated:

* * * Thus in the absence of any interference with the lessee's possession and beneficial use of the land, it would seem clear that the lessee properly may not assert a claim for refund of any payments properly payable under the lease, particularly since the lessee was not deprived of any rights under the lease prior to the issuance of the patent to the mineral claimant.

The rationale of the foregoing is applicable to the case at bar. There is no cause for relief where alleged lack of tenure did not, in actuality, interfere with use of the lands for the

2/ Under 30 CFR 221.58(a) a notice of "intention to drill a well must be filed with the supervisor [of the Geological Survey] and approval received before the work is begun."

authorized use. ^{3/} See Duncan Miller, A-30451 (November 17, 1965). In any event, there is no authority under law to grant appellant the requested relief. Signal Oil and Gas Co., supra.

Although appellant asserts violation of his contractual rights, he has failed to show how such contractual rights have been violated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Douglas E. Henriques, Member

Anne Poindexter Lewis, Member.

^{3/} We note in passing that the Mineral Leasing Act spells out the conditions under which extensions may be granted. See THE LAW OF FEDERAL OIL AND GAS LEASES, § 22.1 to § 22.23 (1971). There is no authority of law for an extension even if appellant's contentions were correct. In Signal Oil and Gas Company, A-29578 (September 25, 1963) the Department stated that an oil and gas lease "cannot be extended for the period of time that action on the first assignment was withheld, there is, as the Bureau [of Land Management] pointed out, no authority for such action."

See Jack P. Burke, A-30473 (November 30, 1965). Since appellant's lease was in its extended term, a partial assignment thereof resulted in two segregated leases to continue for two years and so long thereafter as oil or gas was produced in paying quantities. Act of July 29, 1954 § 6, 68 Stat. 585 (1954), amending the last sentence of § 30(a) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 187a (1958). See Solicitor's Opinion, 64 I.D. 135 (1956).

